ELECTRONICALLY FILED AUG 26, 2022 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA
Supreme Court No. 21-0828

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAHEIM ROMAINE CYRUS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE BRENDAN GREINER, JUDGE

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

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ROUTING STATEMENT

Defendant Jaheim Romaine Cyrus ("Defendant") requests retention by the Iowa Supreme Court. But his arguments are foreclosed by *State v. Fogg*, 936 N.W.2d 664 (Iowa 2019), and *State v. Brown*, 930 N.W.2d 840 (Iowa 2019), so retention is not warranted. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(2).

STATEMENT OF THE CASE

Nature of the Case

Defendant appeals his conviction after a trial on the minutes in which he was found guilty of one count of Carrying Weapons in violation of Iowa Code section 724.4, an aggravated misdemeanor. On appeal, Defendant argues the district court erred by denying his motion to suppress because he was illegally seized.

Course of Proceedings

The State accepts Defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

Around 9:00 p.m., on October 16, 2020, Defendant was driving on Ashby Avenue in Des Moines when he pulled into a driveway, turned around, and parked on the street. Suppr. Tr. at 26:16–18,

State's Ex. 1 (Call to Dispatch). Defendant then moved his car to another location on Ashby and parked again. State's Ex. 1 (Call to Dispatch). An individual who lived on Ashby noticed Defendant move his car and park in different locations on Ashby and called the Des Moines Police Department to report a suspicious vehicle. Suppr. Tr. at 11:8–23, State's Ex. 1 (Call to Dispatch). As a result, Officer Shawn Morgan was "tripped" to the area to check on the reported vehicle. Suppr. Tr. at 11:8–12:1, 19:24–20:17.

Officer Morgan found the vehicle parked on the side of the road and "pulled up kind of next to it, right behind it." Suppr. Tr. at 12:2–14, State's Ex. 1 (Morgan Dash Cam) at 1:55. Officer Morgan's patrol car did not block Defendant's car from leaving. Suppr. Tr. at 14:4–8, State's Ex. 1 (Morgan Dash Cam) at 1:55. As he pulled up, Officer Morgan "could see there was someone inside the car[,] so [he] put [his] spotlight on the driver's side door and mirror area[.]" Suppr. Tr. at 12:2–20. Officer Morgan did this so he "could attempt to see into the vehicle and see if [he] could see who was sitting in the vehicle or what was going on in the vehicle[.]" Suppr. Tr. at 12:18–24. Officer Morgan did not turn on his front emergency lights, but when he approached, he turned on his rear warning lights because he "was

parked in the middle of the road…[so he] wanted to make sure anyone coming from behind didn't strike [his] vehicle or create a dangerous situation[.]" Suppr. Tr. at 16:7–22, 35:16–36:17.

As Officer Morgan stopped his patrol car, Defendant "opened the door and turned and started looking at [Officer Morgan] in [his] car." Suppr. Tr. at 13:1–12, State's Ex. 1 (Morgan Dash Cam) at 2:06. Officer Morgan stepped out of his car and said, "how are you tonight?" to Defendant. Suppr. Tr. at 18:11–19:17, State's Ex. 1 (Morgan Dash Cam) at 2:15. Officer Morgan then stepped to the back of Defendant's car and radioed in the license plate number. Def. Ex. A (Morgan Dash Cam) at 2:26. When Officer Morgan approached Defendant to ask for identification, he "could smell a strong odor of marijuana. So we also discussed the smell of marijuana." Suppr. Tr. at 14:9–24.

Defendant testified at the motion to suppress hearing and claimed that as Officer Morgan got out of his squad car, Defendant asked Officer Morgan if he could get out of the car, and Officer Morgan replied, "No, just stay in the car." Suppr. Tr. at 47:24–48:5. But when Officer Morgan was asked whether he told Defendant to

remain in his vehicle, he said "not to my recollection." Suppr. Tr. at 15:11–14. Officer Morgan explained:

> When I first made my approach, I had no intention of detaining the subject. I was going to approach it as a casual encounter...I've been a police officer for 17 years. When you (untranslatable) a suspicious vehicle, an element of the time. Especially with a suspiciously parked vehicle, a lot of the time it's someone waiting for a ride, someone waiting to pick someone up and criminal activity is not a part of it, from my personal experience, and not part of it more times than not.
>
> So I didn't want to create a situation where I used by emergency lights and boxed him in and create a (untranslatable). And so I wanted to make it casual. And so to do that, I won't use that verbiage "to stay in the car" and create that situation.

Suppr. Tr. at 15:11–16:6, 22:20–25.

The district court found the encounter between Officer Morgan and Defendant was consensual, so Defendant was not seized. 03-03-2021 Order Denying Motion to Suppress at 3; App. 21. The district court went stated that:

> [Defendant] parses just ten seconds of video and derives that a seizure occurred. After reviewing the video several times the Court is not convinced Officer Morgan said anything directly to [Defendant] following "How are you tonight?". The credible evidence established Officer Morgan was speaking into his radio to

> tell dispatch he was “out with the car” and to relay the license plate. The video shows Officer Morgan’s lips are moving with a delay to what is sent to dispatch on the in-car audio.

Id.; App. 21. The district court also concluded the use of the spotlight did not convert the encounter into a seizure because its “nothing more than a mounted flashlight.” *Id.*; App. 21.

ARGUMENT

I. The district court correctly determined that Defendant was not seized.

Preservation of Error

Defendant generally preserved this argument by filing a motion to suppress and receiving an adverse ruling from the district court 02-23-2021 Motion to Suppress, 02-26-2021 Brief in Support, 03-03-2021 Order Denying Motion to Suppress; App. 6–16, 19–22. To the extent Defendant did not preserve all of the arguments he now makes on appeal, that failure will be addressed below.

Standard of Review

A challenge to the denial of a motion to suppress on federal or state constitutional grounds is reviewed de novo. *State v. Pals*, 805 N.W.2d 767, 771 (Iowa 2011). This review requires an independent evaluation of the totality of the circumstances as shown by the entire record. *Id.* (citing *State v. Turner*, 630 N.W.2d 601, 606 (Iowa

2001)). While this Court gives deference to the district court's factual findings, it is not bound by them. *Id.* (citing *State v. Lane*, 726 N.W.2d 371, 377 (Iowa 2007)).

Merits

A. Defendant was not seized when Officer Morgan approached his vehicle to discuss why he was parked on Ashby Avenue.

"The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution protect persons from unreasonable searches and seizures." *State v. Reinders*, 690 N.W.2d 78, 81 (Iowa 2004) (internal quotation marks and citation omitted). "Searches and seizures are unconstitutional if they are unreasonable and reasonableness depends on the facts of the particular case." *State v. Naujoks*, 637 N.W.2d 101, 107 (Iowa 2001) (citing *State v. Roth*, 305 N.W.2d 501, 504 (Iowa 1981)).

Not every interaction between police and citizens is involuntary, and well-established precedent has routinely upheld the ability of an officer to briefly ask an individual for identification or for their purpose for being in an area. *United States v. Drayton*, 536 U.S. 194, 200–01 (2002). An officer's simple approach to an individual to ask basic questions or initiate conversation is not a stop and does not, in

and of itself, require reasonable suspicion. *See State v. Wilkes*, 756 N.W.2d 838, 843 (Iowa 2008); *see also Drayton*, 536 U.S. at 204.

"A seizure occurs when an officer by means of physical force or show of authority in some way restrains the liberty of a citizen." *Reinders*, 690 N.W.2d at 82 (internal quotation marks and citation omitted). Police are free to approach individuals in public places and ask them questions if the person is willing to listen. *See Drayton*, 536 U.S. at 200–01. "'Unless the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded, one cannot say that the questioning resulted in a detention under the Fourth Amendment.'" *Reinders*, 690 N.W.2d at 82 (internal quotation marks and citation omitted). "Whether a 'seizure' occurred is determined by the totality of the circumstances." *Wilkes*, 756 N.W.2d at 842 (citing *Drayton*, 536 U.S. at 207).

> Factors that might suggest a seizure include the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

Id. (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)).

Police coercion "must be present to convert an encounter between police and citizens into a seizure." *Id.* at 843 (citing *Reinders*, 690 N.W.2d at 82); *see also State v. Fogg*, 936 N.W.2d 664, 668 (Iowa 2019). The Iowa Supreme Court has previously held that the "element of coercion is not established by ordinary indicia of police authority." *Wilkes*, 756 N.W.2d at 842. Thus, the showing of a badge, the fact that an officer is in uniform, or the fact that an officer is visibly armed "should have little weight in the analysis." *Id.* (internal quotation marks and citation omitted).

No such coercion or show of authority happened here. First, this is not a case where Officer Morgan initiated a traffic stop by turning on his emergency lights to signal Defendant to pull over. *See State v. Harlan*, 301 N.W.2d 717, 720 (Iowa 1981) ("Stopping a car in transit is obviously a seizure. In [defendant's] case, there is no evidence [the officer] stopped the car."). Instead, Defendant's car was already parked, and Officer Morgan parked behind and to the side of his car and never turned on his siren or emergency lights.

Second, when Officer Morgan approached Defendant's vehicle, he did not issue any commands and did not tell him he was required to stay and speak with him. Defendant claims that Officer Morgan

told him to stay in his car and asserts for the first time on appeal that this statement is audible in the dash cam video if "one listens to the video at high volume through speakers or headphones[.]" App. Br. at 29. The State disagrees. The State listened to both its Exhibit 1 and Defendant's Exhibit A repeatedly—on different computers and using different headphones—and cannot determine what, if anything, Officer Morgan stated at 2:21 in the videos. At the motion to suppress hearing, Defendant did not claim Officer Morgan's alleged statement could be heard on either of these exhibits, and instead stated that "we'll let the judge be the lip reader here." Suppr. Tr. at 24:9–16. It seems apparent from the transcript that no one at the motion to suppress hearing could understand what Officer Morgan may have said at 2:21 in the videos, and many of Defendant's questions on cross-examination were aimed at deciphering just that. Suppr. Tr. at 22:18–26:1.

At best, the videos reveal a muffled sound from Officer Morgan, and he agreed at the hearing that he likely said something to Defendant; he just could not recall what it was. Suppr. Tr. at 23:21–24:19, 42:16–44:15. But Officer Morgan stated it was not his practice to order people to stay in their vehicles during consensual encounters.

Suppr. Tr. at 15:11–16:6, 22:20–25. In his police report, Officer Morgan wrote that after he parked, Defendant "opened his door and engaged with me in conversation as I exited my patrol car." 11-23-2020 Minutes of Testimony (Morgan Report); Conf. App. 6.

Defendant makes much of the fact that the videos show him turn toward Officer Morgan and place one foot on the ground before placing it back in the car to assert Officer Morgan must have ordered him to remain in his car. App. Br. at 28–29. But there could many reasons why Defendant did this, including that Officer Morgan started walking immediately in his direction, which may have prompted him to stay put. Def. Ex. A (Morgan Dash Cam) at 2:20. And at the hearing Defendant was impeached with crimes of dishonesty, so the district court found Officer Morgan's testimony more credible than Defendant's. 03-03-2021 Order Denying Motion to Suppress at 3; App. 21. This finding is not contrary to the evidence in the record.

Third, the placement of Officer Morgan's car did not prevent Defendant from driving away or block his car from leaving in any way. Thus, Officer Morgan did not significantly restrain Defendant's movements. *See Harlan*, 301 N.W.2d at 720 ("[The officer] stood at

the side of the car and did not restrain its movement.”); *see also Fogg*, 936 N.W.2d at 670 (finding no seizure even when the defendant “could not have driven forward.”); *Wilkes*, 756 N.W.2d at 844 (citing *People v. Cascio*, 932 P.2d 1381, 1386–87 (Colo. 1997)) (“[T]he court concluded that if the police car wholly blocks the defendant’s ability to leave, then an encounter cannot be considered consensual, but where egress was only slightly restricted, with approximately ten to twenty feet between the two vehicles, the positioning of the vehicles does not create a detention.”).

Finally, the use of a spotlight and rear warning lights did not convert the encounter into a seizure. Even the use of front emergency lights is not a per se seizure. *See U.S. v. Mabery*, 686 F.3d 591, 597 (8th Cir. 2012) (citing with approval *U.S. v. Clements*, 522 F.3d 790 (7th Cir. 2008) (“no seizure where police officers parked about fifteen to twenty feet behind suspicious vehicle, shined spotlight on it, and activated red and blue flashing lights”). The case law suggests that the use of emergency lights may effectuate a seizure when the lights are used in conjunction with physical restraint or another considerable show of authority. *See State v. Kurth*, 813 N.W.2d 270, 272 (Iowa 2012) (finding a seizure at the point where the police officer

"activated his emergency lights *and* blocked in [defendant's] vehicle." (emphasis added)); *State v. Petzoldt*, No. 10-0861, 2011 WL 2556961, at *2 (Iowa Ct. App. June 29, 2011) (concluding a seizure was effectuated when police officer turned on his emergency lights and blocked defendant's vehicle in his driveway). Here, Officer Morgan never used his emergency lights. Instead, he activated his rear warning lights to warn approaching traffic that he was partially stopped in the road. Suppr. Tr. at 16:7–22, 35:16–36:17. Officer Morgan's dash cam video confirms that no flashing lights were facing in Defendant's direction. State's Ex. 1 (Morgan Dash Cam). The use of these lights does not amount to a seizure, and Defendant cites to no case that says otherwise.

Officer Morgan approached Defendant in a public place to ask him a question and did not use a show of authority or coercion when he did so. As such, Defendant was not seized, and the district court's order denying Defendant's motion to suppress was correct.

B. Defendant did not preserve his argument about pretextual stops and fails to adequately develop an argument that a subjective standard should be applied when determining whether an individual felt free to walk away from a consensual encounter.

Finally, Defendant presents a muddled argument that does not clearly state his position. Defendant begins this argument by asserting that Iowa courts should take "minority status into consideration when evaluating whether a reasonable person" would feel free to walk away from a consensual police encounter. App. Br. at 30–39. But partway through this argument Defendant pivots to pretextual stops—an issue separate and distinct from consensual encounters—and asks "this Court to recognize a different standard for approaching pretextual stops under Article I, section 8 of the Iowa Constitution. Since the stop was pretextual, all evidence obtained thereof should be excluded." App. Br. at 39–47. Defendant ends his argument by asking this Court to adopt a strict scrutiny standard when determining whether a stop is considered reasonable. App. Br. at 48.

As a threshold matter, any argument regarding pretextual stops or adopting a strict scrutiny standard to determine whether an officer properly initiated a stop is not preserved for appeal. Defendant never

mentioned the words "pretextual stop" in his arguments before the district court and did not advocate for the adoption of a new strict scrutiny standard, and the district court did not rule on such claims. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (internal citations omitted) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."). Defendant cannot raise these unpreserved claims for the first time on appeal. *See Taft v. Iowa Dist. Court ex rel Linn Cty.*, 828 N.W.2d 309, 322 (Iowa 2013) (citing *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002) ("Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.").

In his brief in support of his motion to suppress, Defendant asserted that "a nineteen year-old Black man living in Iowa [would not] feel free to leave under" the circumstances here. 02-26-2021 Brief in Support of Motion to Suppress at 6; App. 13. The district court arguably ruled on this claim when it found that Defendant's "feelings whether he was free to leave are not relevant to the conclusion." 03-03-2021 Order Denying Motion to Suppress at 3;

App. 21. But Defendant does not appear to make this same argument on appeal. While he begins with a similar premise, his statements about the subjective feelings of an individual during a consensual encounter dovetail with his pretext argument wherein he argues for the application of a new standard. App. Br. at 30–50. Thus, pretextual stops and the strict scrutiny standard appear to be his primary arguments on appeal—not whether Defendant's subjective belief should be made part of the analysis for consensual encounters.

But even if Defendant's brief can be construed to raise a subjective-belief analysis as a stand-alone claim, the Iowa Supreme Court has continued to make clear that subjective standards do not apply to 4th Amendment or article I, section 8 claims. In *Brown*, the Supreme Court found that an officer's subjective intent for "making the arrest does not limit the right to conduct a search incident thereto" so long as probable cause exists. 930 N.W.2d 840, 854 (Iowa 2019). Instead, "the objective test articulated in *Whren* applies to constitutional challenges to traffic stops under article I, section 8 of the Iowa Constitution." *Id.* at 854. This holding presumably applies to a determination of whether a seizure has taken place or whether the encounter is consensual. The Supreme Court went on to say that "[i]n

the event of an unconstitutional traffic stop based on a claim of selective enforcement, the Equal Protection Clause—not the State or Federal Search and Seizure Clause—is the proper claim to bring when seeking recourse." *Id.* at 850 (citing *Whren v. United States*, 517 U.S. 806, 813 (1996)). And the United States Supreme Court has long held that the "'reasonable person' standard [] ensures that the scope of Fourth Amendment protection does not vary with the state of mind of the particular individual being approached." *Michigan v. Chesternut*, 486 U.S. 567, 574 (1988).

Defendant cites to no state or case that has adopted a subjective standard for determining whether a reasonable person would feel free to end an encounter. Indeed, the first few pages of his argument focus more on whether a consensual encounter is a "legal fiction" for any person—not just those with minority status. App. Br. at 30–32. And he provides no framework or context for how such a standard should apply—possibly because his argument centers primarily on pretextual stops. Would the standard vary based on which minority person was the subject of the encounter, i.e., does it merely ask whether a reasonable Black person would feel free to leave or does the minority's individual characteristics also play a role? Does minority

include only racial minorities, or would it also encompass gender and LGBTQ+ individuals? A reasonableness test that varies based on any individual's unique status would be exceedingly difficult for police officers, lawyers, judges, and even the individual affected to apply fairly. *See Chesternut*, 486 U.S. at 574 (explaining that while the current "test is flexible enough to be applied to the whole range of police conduct in an equally broad range of settings, it calls for consistent application from one police encounter to the next, regardless of the particular individual's response to the actions of the police."). Defendant's suggestion is a stark departure from current federal and state law—one not adopted in any other jurisdiction—and it should be rejected.

CONCLUSION

For all the reasons stated above, the State respectfully requests that this Court affirm Defendant's conviction and sentence and deny all claims on the merits.

REQUEST FOR NONORAL SUBMISSION

The State requests that this case be submitted without oral argument.

Respectfully submitted,

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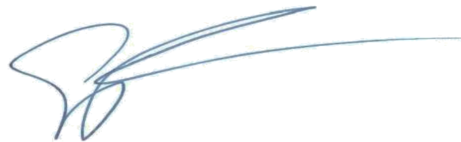
CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,550** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: August 26, 2022



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